

REMARKS

Claims 4-8, 10-28, 42-49, 51, and 53-56 are pending in the application. By this Amendment, claims 1, 9, 50, and 52 have been canceled, without prejudice or disclaimer, and claims 4, 5, 7, 10, 12, 13, 15, 23, 42, 51, 53, 54, and 55 have been amended. No new matter has been added. Support for the amendments to claim 23 may be found, for example, at paragraph [37] and Figs. 1 and 2. Applicants respectfully request prompt reconsideration and examination of the application.

Initially, Applicants thank Examiner Hylton for indicating that claims 6, 12, 18, 26, 45, 51, and 53-56 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Accordingly, Applicants have rewritten claims 12, 51, 53, and 54 in independent form. Therefore, Applicants respectfully submit that amended claims 12, 51, 53, and 54 are allowable for at least this reason.

In the Office Action, the Examiner rejected claims 1, 4, 5, 9-11, 15-17, 21, 23-25, 42-44, 48, 50, and 52 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,753,051 to Tupper ("Tupper") in view of U.S. Patent No. 6,109,487 to Hashimoto ("Hashimoto"); rejected claims 22 and 49 under 35 U.S.C. § 103(a) as being unpatentable over Tupper and Hashimoto, and further in view of U.S. Patent No. 5,297,687 to Freed ("Freed"); rejected claims 1, 4, 5, 7-11, 13-17, 19-21, 23-25, 27, 28, 42-44, 46-48, 50, and 52 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,975,368 to Wood ("Wood") and U.S. Patent Publication No. 2002/0096532 A1 to Berge et al. ("Berge"); and rejected claims 22 and 49 under

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35 U.S.C. § 103(a) as being unpatentable over Wood in view of Berge, and further in view of Freed. Applicants respectfully traverse these rejections.

Claims 4-9, 10, 11, 13-22, 42-49, and 55 depend from either claim 12 or 54 and are at least allowable for the reasons that claims 12 and 54 are allowable. In addition, each of these dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each are separately patentable.

Regarding independent claim 23, Tupper and Hashimoto, alone and in combination, fail to disclose or suggest a closure for use with a container, comprising, *inter alia*, a panel, first flap, and second flap formed as a single piece of unitary construction. To the contrary, Tupper discloses a hinged and swivellable seal and strainer assembly comprising a cover, a straining closure member, and a separate sealing closure member. Tupper further discloses, "a plurality of similar closure members." Tupper, column 1, lines 23, 24, and 61. Tupper does not disclose or suggest that the cover and the plurality of closure members are formed as a single piece of unitary construction. Therefore, Tupper does not disclose "a panel, first flap, and second flap formed as a single piece of unitary construction," as recited in claim 23.

Hashimoto fails to overcome the above-listed deficiency of Tupper and is not relied upon for such a teaching. Instead, the Examiner relies on Tupper for its alleged teaching of "a closure having a panel configured to hold a flap in an open position."

Office Action, paragraph 3.

Accordingly, Applicants submit that the § 103(a) rejection based on Tupper and Hashimoto should be withdrawn.

Further, regarding claim 23, Wood and Berge, alone and in combination, fail to disclose or suggest a closure for use with a container, comprising, *inter alia*, a panel, first flap, and second flap formed as a single piece of unitary construction. Instead, Wood discloses a bi-modal dispensing system for particulate material, comprising a lid 50 and a separate foraminous member 40, each hingedly connected to a body 30. Wood does not disclose or suggest that 30, 40, and 50 may be formed as a single piece of unitary construction. Therefore, Wood does not disclose "a panel, first flap, and second flap formed as a single piece of unitary construction," as recited in claim 23.

Berge fails to overcome the above-listed deficiency of Wood and is not relied upon for such a teaching. Instead, the Examiner relies on Berge for its alleged teaching of "latch[ing] a hinged lid in an open position." Office Action, paragraph 5.

Accordingly, Applicants submit that the § 103(a) rejection based on Wood and Berge should also be withdrawn.

Claims 24-28 and 56 depend from claim 23 and are therefore allowable for at least the same reasons that independent claim 23 is allowable, as well as for their added features.

Summary

The Office Action contains characterizations of the claims and the related art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

The Examiner is invited to telephone the undersigned at (202) 408-4157 if the Examiner deems that a telephone conversation would further the prosecution of the application.

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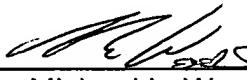
In view of the forgoing amendments and remarks, Applicants assert that each of claims 1, 4-8, 10-28, 42-50, 52, 54, 55, and 56 are in condition for allowance and respectfully request a timely Notice of Allowance.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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